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July 8, 1997

John Galligan, Director
Card Technology Division
Financial Management Service
U.S. Department of the Treasury
Room 526
Liberty Center
401 14th Street, SW
Washington, DC 20227

RE: Electronic Benefits Transfer; Selection and Designation of Financial Institutions as Financial Agents (RIN 1510-AA59)
62 Fed. Reg. 25572 (May 9, 1997)

Dear Mr. Galligan:

The American Association of Retired Persons (AARP) appreciates the opportunity to comment on the proposed rule regarding the Direct Federal Electronic Benefits Transfer (EBT) program. The proposal addresses the selection and designation of financial institutions as financial agents of the Treasury Department. These financial agents will receive direct federal payments for those beneficiaries who remain without bank accounts after January 1, 1999. As the notice of proposed rulemaking states, "Financial institutions that have been designated by the Secretary [of the Treasury] as financial agents of the Government are among the entities authorized by Federal law to carry out the disbursement function." (Notice at 25573.)

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retirement benefits. Payments administered under state EBT programs may also be included in these accounts. We support provisions in the proposed rule providing full consumer protection under the Federal Reserve's Regulation E to participants in the Direct Federal EBT Program[1] *[See AARP objections to this program characterization in the footnote below*]. However, the Association has strong concerns about the role of the financial agent, the terms and conditions established for electronic accounts, and efforts to assist currently unbanked benefit recipients to obtain and use accounts. We believe that the proposed rule could do much more to bring the unbanked population into the financial mainstream.

AARP's comments will address provisions of the proposed rule as follows: 1) the proposed definition of "financial agent" and the proposal that this definition "would not preclude a financial agent from working with one or more non-financial institutions in providing Direct Federal EBT services" (Notice at 25575); 2) the imposition of terms and conditions by Treasury upon accounts established for unbanked federal benefit recipients; 3) the possible difficulties with commingling state and federal EBT benefits on one debit card; and 4) the role of Treasury in helping to establish basic bank accounts for currently unbanked recipients of federal EBT payments.

[1] The proposed rule classifies unbanked recipients of federal payments who are assigned a financial institution to receive direct deposit as "federal EBT recipients." AARP strongly disagrees with this characterization, as it creates an unnecessary stigma for those receiving federal payments through a federal agent versus those receiving federal payments through their own account at a financial institution. There is no reason to characterize this population as "EBT" recipients. AARP would prefer the designation "EFT-99 recipients," but for purposes of consistency with the notice of proposed rulemaking, our comments refer to this group as "federal EBT recipients."

Definition of "Financial Agent" and Relationship with Non-Financial Institutions

The definition of "financial agent" under the proposed rulemaking is fairly protective of consumer interests, as the agent must establish an account for unbanked recipients, and that account must be eligible for federal deposit insurance. Further, the federal agent must comply with Regulation E, and ensure that direct federal payments are credited to the account (discretion is also given to the agent to credit to the account payments under a state EBT program). The duties of the agent and services provided to the recipients are to be decided by the Treasury, and the agent will act solely as a financial agent of the United States Government. As such, the agent will be accountable only to the Treasury, not the recipient.

However, the rule needs to go much further in terms of assuring that financial agents are in a position to provide adequate access and security for the mostly low-income, elderly, rural, and minority populations that comprise the unbanked. A significant problem for many recipients will be the necessity under this federal "EBT" program to carry cash needed for bill payments from the site where they access their funds to another location. Currently, many recipients cash their checks at locations where they can also directly pay their bills or purchase money orders for such a purpose. The elderly are particularly susceptible to robbery when accessing their funds and traveling to another location. Losses through theft could be minimized by providing for electronic purchase of money orders through debits to the account, and deployment of devices for accessing benefits at locations where recipients can pay bills directly or purchase money orders for such purpose. Such locations would include banks, post offices, and utility companies. To the extent possible, efforts must be made to deploy terminals *inside* stores that have extended hours, and in malls or other well-lit, heavily trafficked areas, rather than simply in an isolated vestibule of a bank.

To facilitate access to such locations, the proposed rule makes reference to the ability of financial agents to "partner with" non-financial institutions to provide services to recipients. However, the proposal does not elaborate upon the nature or scope of this partnership, other than stating that it will not be precluded. (Notice at 25575.) As AARP and several other consumer organizations have argued, the types of institutions permitted to receive "federal EBT" transactions should either be federally-insured and regulated institutions or have a fiduciary duty *to the recipient* as authorized agents. While a grocery store offering a Point of Sale (POS) transaction may be the type of non-financial institution the proposal is contemplating, this should be made clear in the rule. If the proposal is suggesting that "fringe bankers" such as check cashing outlets may partner with federal agents to provide service to recipients, that should also be made clear. We are concerned that if fringe bankers are permitted to participate in "federal EFT," some of the abuses that already occur in the absence of state regulation of such establishments may proliferate. Strong federal prohibitions would be required to protect against such abuses.

Terms and Conditions Imposed by Treasury on Accounts of "Federal EBT" Recipients

The proposal states that ***all*** of the attributes of a "federal EBT" recipient's account will be determined by the Treasury -- none by the recipient -- and that the recipient has no ability to change the attributes of the account. The reason for this proposed mandate is that the federal institution designated to receive the federal EBT payments is serving as the agent (i.e., "bank") for the Treasury, who is the depositor. This situation differs from direct deposit, an EFT system for those who already have an account at a financial institution. In direct deposit, the financial institution is selected by and serves as an agent of its depositor, the *recipient.* In direct deposit, the recipient is the customer and can change institutions based on the terms and conditions he or she selects. With federal EBT accounts, the depositor is the *Government,* and therefore the Treasury determines the terms and conditions of these accounts. This being the case, the Department has an obligation to assure that the accounts provided under the EBT program are appropriate to the needs of benefit recipients. ***Unfortunately, the proposed rule falls short of what is needed.***

The population comprising unbanked federal payment recipients includes some of the poorest and least educated people in this country. According to the latest Survey of Consumer Finances (SCF), published in 1995, almost half of all families (48.8 percent) without checking accounts had incomes under $10,000. Families without bank accounts also tend to have lower education and literacy levels. An analysis of the 1985 Survey of Income and Program Participation (SIPP) by the U.S. General Accounting Office found that 57 percent of nondepositor family heads had 9 to 12 years of education, and 24 percent had 8 years or less. Literacy and familiarity with banking technology will become critical factors as large numbers of persons are required to use ATMs and POS terminals for the *first time* to access what, for many, is their primary source of income. Data from the SCF indicate that among those aged 65-74 without checking accounts, "difficulties in managing and balancing an account" were among the chief reasons given for not having one. These circumstances warrant strong efforts to assure that low-income households who are dependent on their federal benefits have adequate access, and are protected from abuses such as excessive fees and surcharges. Accounts established under the proposed rule should provide the following:

- Least-cost access to federal entitlement payments, regardless of whether they are debited from an ATM, POS, or other type of system. Federal "EBT" participants should not be subject to "foreign" bank fees because they cannot easily access an agent's ATM;

- Clear, easy-to-understand disclosures printed on the card about how to use it, what to do if it is lost or stolen, and a toll-free number to call for questions or to report the loss or theft of a card;

- Recipient selection of Personalized Identification Number (PIN). Experience under the Department of Agriculture's food stamp EBT pilot indicates that allowing households to select their own PINs increases the likelihood that they will be able to recall the numbers easily and therefore reduces the opportunities for theft due to recipients carrying PINs with their cards;

- A simplified guide to use of Federal EBT. Agents should be required to provide recipients with a single pamphlet that has all the information regarding the system and recipients' "rights and responsibilities," including information about how to obtain a waiver. A set of step-by-step instructions on using an ATM should also be included. Further, the agent should be required to provide an opportunity for in-person training. This is often the best means for emphasizing PIN security issues and giving recipients confidence in using the technology;

- Protections against discrimination in service. The regulations should prohibit agents from establishing separate lines or access devices for EBT participants, and they should permit use of access devices during all hours of operation;

- Replacement of lost or stolen cards within two days;

- Recipient choice of agent. Recipients should have the ability to change financial agents if the agent initially designated raises fees, limits the amount or frequency of debits allowed per day or per month, requires a minimum balance, or impose any other condition that burdens the recipient's use of the debit card; and

- Minimum recipient services. Recipients should receive receipts for each debit so as to keep track of their expenses, and a monthly account balance so that they can assess whether the debits recorded are correct, track their spending patterns, and determine the balance on their account.

While federal benefits accessed under the proposed Direct Federal "EBT" program will be covered under Regulation E, the losses that can be incurred ($50) under that measure have a more severe impact on low-income households than on others. In the event the recipient must report an error, the notice and error resolution requirements are complicated and may not help the recipient understand if there are additional avenues of remedy. To simplify these processes, AARP proposes that banks could be required to provide recipients with a special telephone number to call to learn if a deposit was made and obtain verbal/written assistance in getting a timely resolution of any error. This has added importance for many unbanked recipients since a financial institution may now fulfill its error resolution obligation by simply informing the recipient whether or not its investigation shows the error was caused by the bank. Further, banks are also allowed ten days to respond to an inquiry under Regulation E, and additional time to resolve the problem. Many recipients of government payments cannot afford to suffer out-of-pocket loss due to unauthorized transfer of their benefits or an inoperable ATM. AARP believes the additional safeguards recommended above will assist in overcoming the inadequacies and difficulties in the proposed rulemaking.

Difficulties with Including State EBT and Federal Benefits on One Debit Card

The proposed rule gives discretion to the *financial agent* to credit to a recipient's account payments made under a state EBT program. (Notice at 25576.) AARP believes that including a variety of benefits on one card should be the choice of the recipient rather than the financial agent. Notice should be given as to the difference in protection for "federal EBT" and state benefits (as noted above), and receipts and account statements should be provided to allow recipients to keep track of balance amounts in each account. Such information is critical to effectively managing "federal EBT" and state EBT on the same card since they also have different levels of consumer protections.

"Federal EBT" recipients under this proposal will receive full Regulation E protection if they opt for a separate card, but those recipients who receive combined "federal EBT" and state EBT payments on one card do not enjoy such complete protection. It is assumed that the "federal EBT" recipient would have to indicate which account was being drawn from at the time of the debit. Even with the accounts kept separate on one card, to protect federal "EBT" benefits from loss or theft and leave state EBT benefits unprotected is simply illogical. In this scenario, the recipient should probably try to draw down the state EBT benefits first, to shorten the amount of time they may be subject to loss if the card is later lost or stolen. However, many people may not be aware of the lack of protection given one set of benefits versus another, particularly because they are on the same card. Further, if they were receiving state EBT benefits first, and later started receiving "federal EBT" benefits (such as Social Security) on the same card, they might not realize they indeed have protection for the federal EBT benefits.

As noted earlier, AARP also believes that labeling unbanked recipients of federal payments as "EBT" recipients will create a stigma for this group. There are alternative classifications that would still distinguish this group from those recipients who receive federal payments through direct deposit, yet would not segregate those who cannot afford regular bank accounts. Since Treasury already classifies EFT accounts as either DD (Direct Deposit) or DD Too (Direct Deposit Too), the confusion over state and federal regulatory authority could be avoided by building on those classifications -- for example, EFT-M (Electronic Transfer Funds-Mandatory) or DD-M (Direct Deposit Mandatory). Even "EFT-99" avoids the confusion caused by use of "EBT." Suggested designations neither preclude existing federal and state options to use a single debit card, nor do they confuse the type of account and related consumer protections.

Treasury Department Incentives for Basic Bank Accounts

Secretary Rubin has noted that "electronic money should increase, rather than decrease, access to financial services and the mainstream economy for those in inner cities or poor rural areas." AARP believes that the Treasury Department could help speed this integration of the unbanked population into the mainstream financial system by creating an incentive program for financial institutions to offer basic bank accounts. While the Association agrees that electronic transfers of federal payments can be a safer, more convenient way for recipients to receive payments, the federal "EBT" program should not be viewed as a substitute for access to a broader array of banking services by low-income households.

There are many benefits the proposed federal "EBT" accounts lack. Without checking privileges, "federal EBT" recipients will be compelled to use money orders or other inconvenient, expensive methods to pay basic bills. To cash checks, they may have to use check cashing outlets or finance companies, as these fringe bankers have filled the void created by the absence of banks in low- and moderate-income neighborhoods. Finally, there is a danger that sustained use of "federal EBT" accounts by large numbers of payment recipients will become a negative statement about the financial desirability of the "EBT" account and the account holder in the eyes of the mainstream banking system.

Currently, Community Reinvestment Act obligations are the only incentive financial institutions have to offer basic bank accounts. This has not proven to be sufficient incentive, as most banks do not offer these accounts. Under Treasury's proposal, financial institutions will benefit from receiving electronic transfers of money without having to offer recipients more than a debit card. As a further incentive, AARP recommends that the Department, in selecting financial agents, only select those depository institutions that currently offer basic bank accounts, and participate or agree to participate in the Direct Deposit Too Program.

Conclusion

There are many benefits to bringing unbanked recipients of federal payments into the mainstream banking system. However, care must be taken to ensure that the accounts provided to these consumers are safe, affordable, easily accessed, and properly monitored. Again, AARP appreciates the opportunity to submit comments on this proposal. If you have any questions, please contact Larry White, Federal Affairs, at 202-434-3800. Thank you.

Sincerely,

Martin A. Corry
Director
Federal Affairs